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THE PSYCHOLOGY OF PUNITIVE JUSTICE

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The study of instincts on the one side and of the motor character of human conduct upon the other has given us a different picture of human nature from that which a dogmatic doctrine of the soul and an intellectualistic psychology presented to an earlier generation.

The instincts even in the lower animal forms have lost their rigidity. They are found to be subject to modification by experience, and the nature of the animal is found to be not a bundle of instincts but an organization within which these congenital habits function to bring about complex acts—acts which are in many cases the result of instincts which have modified each other. Thus new activities arise which are not the simple expression of bare instincts. A striking illustration of this is found in play, especially among young animal forms, in which the hostile instinct is modified and held in check by the others that dominate the social life of the animals. Again the care which the parent form gives to the infant animal admits of hostile features which, however, do not attain the full expression of attack and destruction usually involved in the instinct from which they arise. Nor is this merging and interaction of such divergent instinctive acts a process of alternate

dominance of now one and now another instinct. Play and parental care may be and generally are of a piece, in which the inhibition of one tendency by the others has entered into the structure of the animal's nature and seemingly even of its congenital nervous organization. Another illustration of such a merging of divergent instincts is found in the elaborate wooing of the female among the birds.

Back of all this type of organization of instinctive conduct lies the social life within which there must be co-operation of the different individuals, and therefore a continual adjustment of the responses to the changing attitudes of the animals that participate in the corporate acts. It is this body of organized instinctive reactions to one another which makes up the social nature of these forms, and it is from a social nature of this kind exhibited in the conduct of lower forms that our human nature is evolved. An elaborate analysis of this is still in the making, but certain great features in it stand out with sufficient clearness to warrant comment. We find two opposing groups of instincts, those which we have named hostile and those which may be termed friendly, the latter being largely combinations of the parental and sexual instincts. The import of a herding instinct lying back of them all is still very uncertain if not dubious. What we do find is that individuals adjust themselves to each other in common social processes, but come into conflict with each other frequently in the process, that the expression of this individual hostility within the whole social act is primarily that of the destructive hostile type, modified and molded by the organized social reaction, that where this modification and control breaks down, as, e.g., in the rivalry of males in the herd or pack, the hostile instinct may assert itself in its native ruthlessness.

If we turn to the human nature that has developed out of the social nature of lower animals, we find in addition to the organization of social conduct that I have indicated a vast elaboration of the process of adjustment of individuals to each other. This elaboration of gesture, to use Wundt's generalized term, reaches its most developed expression in language. Now language was first the attitude, glance of the eye, movement of the body and its parts

indicating the oncoming social act to which the other individuals must adjust their conduct. It becomes language in the narrower sense when it is a common speech of whatever form; that is when through his gesture the individual addresses *himself* as well as the others who are involved in the act. His speech is their speech. He can address himself in their gestures and thus present to himself the whole social situation within which he is involved, so that not only is conduct social but consciousness becomes social as well.

It is out of this conduct and this consciousness that human society grows. What gives it its human character is that the individual through language addresses himself in the rôle of the others in the group and thus becomes aware of them in his own conduct. But while this phase of evolution is perhaps the most critical in the development of man, it is after all only an elaboration of the social conduct of lower forms. Self-conscious conduct is only an exponent which raises the possible complications of group activity to a higher degree. It does not change the character of the social nature that is elaborated and complicated, nor does it change the principles of its organization. Human nature still remains an organization of instincts which have mutually affected each other. Out of such fundamental instincts as those of sex, parenthood, and hostility has arisen an organized type of social conduct, the conduct of the individual within the group. The attack upon the other individuals of the group has been modified and softened so that the individual asserts himself as over against the others in play, in courting, in care of the young, in certain common attitudes of attack and defense, without the attempted destruction of the individuals attacked. If we use the common terminology we shall account for these modifications by the process of trial and error within the evolution out of which has arisen the social form. Out of the hostile instinct has arisen conduct modified by the social instincts that has served to delimit the conduct springing from sex, parenthood, and mutual defense and attack. It has been the function of the hostile instinct to provide the reaction by which the individual asserts himself within a social process, thus modifying that process while the hostile conduct is itself modified *pro tanto*. The result is the appearance of new individuals, certain types of

sex mates, playmates, parent and child forms, mates in fight and mates in defense. While this assertion of the individual within the social process delimits and checks the social act at various points, it leads to a modified social response with a new field of operation which did not exist for the unmodified instincts. The source of these higher complexes of social conduct appears suddenly when through a breakdown of the organization of the social act there is enacted a crime of passion, the direct outcome of self-assertion within sex, family, or other group responses. Unmodified self-assertion under these conditions means the destruction of the individual attacked.

When now, through the exponent of self-consciousness, the complexities of social conduct are raised to the n th power, when the individual addresses himself as well as the others, by his gestures, when in the rôle of another he can respond to his own stimulus, all the range of possible activities is brought within the field of social conduct. He finds himself within groups of varied sorts. The size of the group to which he can belong is limited only by his ability to co-operate with its members. Now the common control over the food process lifts these instincts out of the level of the mechanical response to biologically determined stimuli and brings them within the sweep of self-conscious direction inside of the larger group activity. And these varied groupings multiply the occasions of individual oppositions. Here again the instinct of hostility becomes the method of self-assertion; but while the oppositions are self-conscious the process of readjustment and the molding of the hostile attitudes by the larger social process remains in principle the same, though the long road of trial and error may be at times abandoned for the short cuts which the symbolism of language provides.

On the other hand the consciousness of self through consciousness of others is responsible for a more profound sense of hostility—that of the members of the groups to those opposed to it, or even to those merely outside it. And this hostility has the backing of the whole inner organization of the group. It provides the most favorable condition for the sense of group solidarity because in the common attack upon the common enemy the individual differences

are obliterated. But in the development of these group hostilities we find the same self-assertion with the attempted elimination of the enemy giving way before the larger social whole within which the conflicting groups find themselves. The hostile self-assertion passes over into functional activities in the new type of conduct as it has taken place in play even among lower animal forms. The individual becomes aware of himself, not through the conquest of the other, but through the distinction of function. It is not so much that the actual hostile reactions are themselves transformed as that the individual who is conscious of himself as over against the enemy finds other opportunities for conduct which remove the immediate stimuli for destroying the enemy. Thus the conqueror who realized himself in his power of life or death over the captive found in the industrial value of the slave a new attitude which removed the sense of hostility and opened the door to that economic development which finally placed the two upon the same ground of common citizenship.

It is in so far as the opposition reveals a larger underlying relationship within which the hostile individuals arouse non-hostile reactions that the hostile reactions themselves become modified into a type of self-assertion which is balanced against the self-assertion of those who had been enemies, until finally these oppositions become the compensating activities of different individuals in a new social conduct. In other words the hostile instinct has the function of the *assertion* of the social self when this self comes into existence in the evolution of human behavior. The man who has achieved an economic, a legal, or any type of social triumph does not feel the impulse to physically annihilate his opponent, and ultimately the mere sense of the security of his social position may rob the stimulus to attack of all of its power.

The moral of this is, and one is certainly justified in emphasizing it at this time of a profound democratic movement in the midst of a world-war, that advance takes place in bringing to consciousness the larger social whole within which hostile attitudes pass over into self-assertions that are functional instead of destructive.

The following pages discuss the hostile attitude as it appears especially in punitive justice.

In the criminal court it is the purpose of the proceeding to prove that the defendant did or did not commit a certain act, that in case the defendant did commit the act this act falls under such and such a category of crime or misdemeanor as defined by the statute, and that, as a consequence, he is subject to such and such punishment. It is the assumption of this procedure that conviction and punishment are the accomplishment of justice and also that it is for the good of society, that is, that it is both just and expedient, though it is not assumed that in any particular case the meting out to a criminal of the legal recompense of his crime will accomplish an immediate social good which will outweigh the immediate social evil that may result to him, his family, and society itself from his conviction and imprisonment. Galsworthy's play *Justice* turns upon the wide discrepancy between legal justice and social good in a particular case. On the other side lies the belief that without this legal justice with all its miscarriages and disintegrating results society itself would be impossible. In the back of the public mind lie both these standards of criminal justice, that of retribution and that of prevention. It is just that a criminal should suffer in proportion to the evil that he has done. On the other hand it is just that the criminal should suffer so much and in such a manner that his penalty will serve to deter him and others from committing the like offense in the future. There has been a manifest shift in the emphasis upon these two standards. During the Middle Ages, when courts of justice were the antechambers to chambers of torture, the emphasis lay upon the nice proportioning of the suffering to the offense. In the grand epic manner Dante projected this torture chamber, as the accomplishment of justice, against the sphere of the heavens, and produced those magnificent distortions and magnifications of human primitive vengeance that the mediaeval heart and imagination accepted as divine.

There existed, however, even then no commensurability between retributory sufferings and the evil for which the criminal was held responsible. In the last analysis he suffered until satisfaction had been given to the outraged sentiments of the injured person, or of his kith and kin, or of the community, or of an angry God. To satisfy the latter an eternity might be too short, while a merciful

death ultimately carried away from the most exacting community the victim who was paying for his sin in the coin of his own agony. Commensurability does not exist between sin and suffering but does exist roughly between the sin and the amount and kind of suffering that will satisfy those who feel themselves aggrieved and yet it has become the judgment of our common moral consciousness that satisfaction in the suffering of the criminal has no legitimate place in assessing his punishment. Even in its sublimated form, as a part of righteous indignation, we recognize its legitimacy only in resenting and condemning injury, not in rendering justice for the evil done. It was therefore natural that in measuring the punishment the emphasis should shift from retribution to prevention, for there is a rough quantitative relation between the severity of the penalty and the fear which it inspires. This shift to the standard of expediency in determining the severity of the penalty does not mean that retribution is no longer the justification for punishment either in the popular mind or in legal theory, for however expedient it may be to visit crimes with condign punishments in the interest of the welfare of society, the justification for inflicting the suffering at all is found in the assumption that the criminal owes retributive suffering to the community; a debt which the community may collect in the form and amount which is most expedient to itself.

This curious combination of the concepts of retributive suffering which is the justification for punishment but may not be the standard for the amount and degree of the punishment, and of a social expediency which may not be the justification for the punishment itself but is the standard of the amount and kind of punishment inflicted, is evidently not the whole story. If retribution were the only justification for punishment it is hard to believe that punishment would not itself have disappeared when society came to recognize that a possible theory of punishment could not be worked out or maintained on the basis of retribution; especially when we recognize that a system of punishments assessed with reference to their deterrent powers not only works very inadequately in repressing crime but also preserves a criminal class. This other part of the story, which neither retribution nor social expediency tells,

reveals itself in the assumed solemnity of criminal court procedure, in the majesty of the law, in the supposedly impartial and impersonal character of justice. These characters are not involved in the concept of retribution nor in that of deterrence. Lynch law is the very essence of retribution and is inspired with the grim assurance that such summary justice must strike terror into the heart of the prospective criminal, and lynch law lacks solemnity, and majesty, and is anything but impersonal or impartial. These characters inhere, not in the primitive impulses out of which punitive justice has arisen nor in the cautious prudence with which society devises protection for its goods, but in the judicial institution which theoretically acts on rule and not upon impulse and whose justice is to be done though the heavens fall. What, then, are these values evidenced in and maintained by the laws of punitive justice? The most patent value is the theoretically impartial enforcement of the common will. It is a procedure which undertakes to recognize and protect the individual in the interest of the common good and by the common will. In his acceptance of the law and dependence upon it the individual is at one with the community, while this very attitude carries with it the recognition of his responsibility to obey and support the law in its enforcement. So conceived the common law is an affirmation of citizenship. It is, however, a grave mistake to assume that the law itself and men's attitudes toward it can exist *in abstracto*. It is a grave mistake, for too often the respect for law as law is what we demand of members of the community, while we are able to regard with comparative indifference defects both in the concrete laws and in their administration. It is not only a mistake, it is also a fundamental error, for all emotional attitudes—and even respect for law and a sense of responsibility are emotional attitudes—arise in response to concrete impulses. We do not respect law in the abstract but the values which the laws of the community conserve. We have no sense of responsibility as such but an emotional recognition of duties which our position in the community entails. Nor are these impulses and emotional reactions less concrete because they are so organized into complex habits that some slight but appropriate stimulus sets a whole complex of impulses into opera-

tion. A man who defends an apparently unimportant right on principle is defending the whole body of analogous rights which a vast complex of social habits tends to preserve. His emotional attitude, which is seemingly out of proportion to the immediate issue, answers to all of those social goods toward which the different impulses in the organized body of habits are directed. Nor may we assume that because our emotions answer to concrete impulses they are therefore necessarily egoistic or self-regarding. No small portion of the impulses which make up the human individual are immediately concerned with the good of others. The escape from selfishness is not by the Kantian road of an emotional response to the abstract universal, but by the recognition of the genuinely social character of human nature. An important instance of this illusory respect for abstract law appears in our attitude of dependence upon the law and its enforcement for the defense of our goods and those of others with whom we identify our interests.

A threatened attack upon these values places us in an attitude of defense, and as this defense is largely intrusted to the operation of the laws of the land we gain a respect for the laws which is in proportion to the goods which they defend. There is, however, another attitude more easily aroused under these conditions which is, I think, largely responsible for our respect for law as law. I refer to the attitude of hostility to the lawbreaker as an enemy to the society to which we belong. In this attitude we are defending the social structure against an enemy with all the animus which the threat to our own interests calls out. It is not the detailed operation of the law in defining the invasion of rights and their proper preservation that is the center of our interest but the capture and punishment of the personal enemy, who is also the public enemy. The law is the bulwark of our interests, and the hostile procedure against the enemy arouses a feeling of attachment due to the means put at our disposal for satisfying the hostile impulse. The law has become the weapon for overwhelming the thief of our purses, our good names, or even of our lives. We feel toward it as we feel toward the police officer who rescues us from a murderous assault. The respect for the law is the obverse side of our hatred for the

criminal aggressor. Furthermore the court procedure, after the man accused of the crime is put under arrest and has been brought to trial, emphasizes this emotional attitude. The state's attorney seeks a conviction. The accused must defend himself against this attack. The aggrieved person and the community find in this officer of the government their champion. A legal battle takes the place of the former physical struggle which led up to the arrest. The emotions called out are the emotions of battle. The impartiality of the court who sits as the adjudicator is the impartiality of the umpire between the contending parties. The assumption that contending parties will each do his utmost to win, places upon each, even upon the state's attorney, the obligation to get a verdict for his own side rather than to bring about a result which will be for the best interests of all concerned. The doctrine that the strict enforcement of the law in this fashion is for the best interest of all concerned has no bearing upon the point which I am trying to emphasize. This point is that the emotional attitude of the injured individual and of the other party to the proceedings—the community—toward the law is that engendered by a hostile enterprise in which the law has become the ponderous weapon of defense and attack.¹

There is another emotional content involved in this attitude of respect for law as law, which is perhaps of like importance with the other. I refer to that accompanying stigma placed upon the criminal. The revulsions against criminality reveal themselves in a sense of solidarity with the group, a sense of being a citizen which on the one hand excludes those who have transgressed the laws of

¹ I am referring here to criminal law and its enforcement, not only because respect for the law and the majesty of the law have reference almost entirely to criminal justice, but also because a very large part, perhaps the largest part, of civil law proceedings are undertaken and carried out with the intent of defining and readjusting social situations without the hostile attitudes which characterize the criminal procedure. The parties to the civil proceedings belong to the same group and continue to belong to this group, whatever decision is rendered. No stigma attaches to the one who loses. Our emotional attitude toward this body of law is that of interest, of condemnation and approval as it fails or succeeds in its social function. It is not an institution that must be respected even in its disastrous failures. On the contrary it must be changed. It is hedged about in our feelings by no majesty. It is efficient or inefficient and as such awakens satisfaction or dissatisfaction and an interest in its reform which is in proportion to the social values concerned.

the group and on the other inhibits tendencies to criminal acts in the citizen himself. It is this emotional reaction against conduct which excludes from society that gives to the moral taboos of the group such impressiveness. The majesty of the law is that of the angel with the fiery sword at the gate who can cut one off from the world to which he belongs. The majesty of the law is the dominance of the group over the individual, and the paraphernalia of criminal law serves not only to exile the rebellious individual from the group, but also to awaken in law-abiding members of society the inhibitions which make rebellion impossible to them. The formulation of these inhibitions is the basis of criminal law. The emotional content that accompanies them is a large part of the respect for law as law. In both these elements of our respect for law as law, in the respect for the common instrument of defense from and attack upon the enemy of ourselves and of society, and in the respect for that body of formulated custom which at once identifies us with the whole community and excludes those who break its commandments, we recognize concrete impulses—those of attack upon the enemy of ourselves and at the same time of the community, and those of inhibition and restraint through which we feel the common will, in the identity of prohibition and of exclusion. They are concrete impulses which at once identify us with the predominant whole and at the same time place us on the level of every other member of the group, and thus set up that theoretical impartiality and evenhandedness of punitive justice which calls out in no small degree our sense of loyalty and respect. And it is out of the universality that belongs to the sense of common action springing out of these impulses that the institutions of law and of regulative and repressive justice arise. While these impulses are concrete in respect of their immediate object, i.e., the criminal, the values which this hostile attitude toward the criminal protects either in society or in ourselves are negatively and abstractly conceived. Instinctively we estimate the worth of the goods protected by the procedure against the criminal and in terms of this hostile procedure. These goods are not simply the physical articles but include the more precious values of self-respect, in not allowing one's self to be overridden, in downing the enemy of the

group, in affirming the maxims of the group and its institutions against invasions. Now in all of this we have our backs toward that which we protect and our faces toward the actual or potential enemy. These goods are regarded as valuable because we are willing to fight and even die for them in certain exigencies, but their intrinsic value is neither affirmed nor considered in the legal proceeding. The values thus obtained are not their values in use but sacrifice values. To many a man his country has become infinitely valuable because he finds himself willing to fight and die for it when the common impulse of attack upon the common enemy has been aroused, and yet he may have been, in his daily life, a traitor to the social values he is dying to protect because there was no emotional situation within which these values appeared in his consciousness. It is difficult to bring into commensurable relationship to each other a man's willingness to cheat his country out of its legitimate taxes and his willingness to fight and die for the same country. The reactions spring from different sets of impulses and lead to evaluations which seem to have nothing in common with each other. The type of valuation of social goods that arises out of the hostile attitude toward the criminal is negative, because it does not present the positive social function of the goods that the hostile procedure protects. From the standpoint of protection one thing behind the wall has the same import as anything else that lies behind the same defense. The respect for law as law thus is found to be a respect for a social organization of defense against the enemy of the group and a legal and judicial procedure that are oriented with reference to the criminal. The attempt to utilize these social attitudes and procedures to remove the causes of crime, to assess the kind and amount of punishment which the criminal should suffer in the interest of society, or to reinstate the criminal as a law-abiding citizen has failed utterly. For while the institutions which inspire our respect are concrete institutions with a definite function, they are responsible for a quite abstract and inadequate evaluation of society and its goods. These legal and political institutions organized with reference to the enemy or at least the outsider give a statement of social goods which is based upon defense and not upon function. The aim of the

criminal proceeding is to determine whether the accused is innocent, i.e., still belongs to the group or whether he is guilty, i.e., is put under the ban which criminal punishment carries with it. The technical statement of this is found in the loss of the privileges of a citizen, in sentences of any severity, but the more serious ban is found in the fixed attitude of hostility on the part of the community toward a jailbird. One effect of this is to define the goods and privileges of the members of the community as theirs in virtue of their being law-abiding, and their responsibilities as exhausted by the statutes which determine the nature of criminal conduct. This effect is not due alone to the logical tendency to maintain the same definition of the institution of property over against the conduct of the thief and that of the law-abiding citizen. It is due in far greater degree to the feeling that we all stand together in the protection of property. In the positive definition of property, that is in terms of its social uses and functions, we are met by wide diversity of opinion, especially where the theoretically wide freedom of control over private property, asserted over against the thief, is restrained in the interest of problematic public goods. Out of this attitude toward the goods which the criminal law protects arises that fundamental difficulty in social reform which is due, not to mere difference in opinion nor to conscious selfishness, but to the fact that what we term opinions are profound social attitudes which, once assumed, fuse all conflicting tendencies over against the enemy of the people. The respect for law as law in its positive use in defense of social goods becomes unwittingly a respect for the conceptions of these goods which the attitude of defense has fashioned. Property becomes sacred not because of its social uses but because all the community is as one in its defense, and this conception of property, taken over into the social struggle to make property serve its functions in the community, becomes the bulwark of these in possession, *beati possidentes*.

Beside property other institutions have arisen, that of the person with its rights, that of the family with its rights, and that of the government with its rights. Wherever rights exist, invasion of those rights may be punished, and a definition of these institutions is formulated in protecting the right against trespass. The

definition is again the voice of the community as a whole proclaiming and penalizing the one whose conduct has placed him under the ban. There is the same unfortunate circumstance that the law speaking against the criminal gives the sanction of the sovereign authority of the community to the negative definition of the right. It is defined in terms of its contemplated invasion. The individual who is defending his own rights against the trespasser is led to state even his family and more general social interests in abstract individualistic terms. Abstract individualism and a negative conception of liberty in terms of the freedom from restraints become the working ideas in the community. They have the prestige of battle cries in the fight for freedom against privilege. They are still the countersigns of the descendants of those who cast off the bonds of political and social restraint in their defense and assertion of the rights their forefathers won. Wherever criminal justice, the modern elaborate development of the taboo, the ban, and their consequences in a primitive society, organizes and formulates public sentiment in defense of social goods and institutions against actual or prospective enemies, there we find that the definition of the enemies, in other words the criminals, carries with it the definition of the goods and institutions. It is the revenge of the criminal upon the society which crushes him. The concentration of public sentiment upon the criminal which mobilizes the institution of justice, paralyzes the undertaking to conceive our common goods in terms of their uses. The majesty of the law is that of the sword drawn against a common enemy. The even-handedness of justice is that of universal conscription against a common enemy, and that of the abstract definition of rights which places the ban upon anyone who falls outside of its rigid terms.

Thus we see society almost helpless in the grip of the hostile attitude it has taken toward those who break its laws and contravene its institutions. Hostility toward the lawbreaker inevitably brings with it the attitudes of retribution, repression, and exclusion. These provide no principles for the eradication of crime, for returning the delinquent to normal social relations, nor for stating the transgressed rights and institutions in terms of their positive social functions.

On the other side of the ledger stands the fact that the attitude of hostility toward the lawbreaker has the unique advantage of uniting all members of the community in the emotional solidarity of aggression. While the most admirable of humanitarian efforts are sure to run counter to the individual interests of very many in the community, or fail to touch the interest and imagination of the multitude and to leave the community divided or indifferent, the cry of thief or murder is attuned to profound complexes, lying below the surface of competing individual effort, and citizens who have separated by divergent interests stand together against the common enemy. Furthermore, the attitude reveals common, universal values which underlie like a bedrock the divergent structures of individual ends that are mutually closed and hostile to each other. Seemingly without the criminal the cohesiveness of society would disappear and the universal goods of the community would crumble into mutually repellent individual particles. The criminal does not seriously endanger the structure of society by his destructive activities, and on the other hand he is responsible for a sense of solidarity, aroused among those whose attention would be otherwise centered upon interests quite divergent from those of each other. Thus courts of criminal justice may be essential to the preservation of society even when we take account of the impotence of the criminal over against society, and the clumsy failure of criminal law in the repression and suppression of crime. I am willing to admit that this statement is distorted, not however in its analysis of the efficacy of the procedure against the criminal, but in its failure to recognize the growing consciousness of the many common interests which is slowly changing our institutional conception of society, and its consequent exaggerated estimate upon the import of the criminal. But it is important that we should realize what the implications of this attitude of hostility are within our society. We should especially recognize the inevitable limitations which the attitude carries with it. Social organization which arises out of hostility at once emphasizes the character which is the basis of the opposition and tends to suppress all other characters in the members of the group. The cry of "stop thief" unites us all as property owners against the robber. We all stand shoulder to

shoulder as Americans against a possible invader. Just in proportion as we organize by hostility do we suppress individuality. In a political campaign that is fought on party lines the members of the party surrender themselves to the party. They become simply members of the party whose conscious aim is to defeat the rival organization. For this purpose the party member becomes merely a republican or a democrat. The party symbol expresses everything. Where simple social aggression or defense with the purpose of eliminating or encysting an enemy is the purpose of the community, organization through the common attitude of hostility is normal and effective. But as long as the social organization is dominated by the attitude of hostility the individuals or groups who are the objectives of this organization will remain enemies. It is quite impossible psychologically to hate the sin and love the sinner. We are very much given to cheating ourselves in this regard. We assume that we can detect, pursue, indict, prosecute, and punish the criminal and still retain toward him the attitude of reinstating him in the community as soon as he indicates a change in social attitude himself, that we can at the same time watch for the definite transgression of the statute to catch and overwhelm the offender, and comprehend the situation out of which the offense grows. But the two attitudes, that of control of crime by the hostile procedure of the law and that of control through comprehension of social and psychological conditions, cannot be combined. To understand is to forgive and the social procedure seems to deny the very responsibility which the law affirms, and on the other hand the pursuit by criminal justice inevitably awakens the hostile attitude in the offender and renders the attitude of mutual comprehension practically impossible. The social worker in the court is the sentimentalist, and the legalist in the social settlement in spite of his learned doctrine is the ignoramus.

While then the attitude of hostility, either against the transgressor of the laws or against the external enemy, gives to the group a sense of solidarity which most readily arouses like a burning flame and which consumes the differences of individual interests, the price paid for this solidarity of feeling is great and at times disastrous. Though human attitudes are far older than any human

institutions and seem to retain identities of structure that make us at home in the heart of every man whose story has come down to us from the written and unwritten past, yet these attitudes take on new forms as they gather new social contents. The hostilities which flamed up between man and man, between family and family, and fixed the forms of old societies have changed as men came to realize the common whole within which these deadly struggles were fought out. Through rivalries, competitions, and co-operations men achieved the conception of a social state in which they asserted themselves while they at the same time affirmed the status of the others, on the basis not only of common rights and privileges but also on the basis of differences of interest and function, in an organization of more varied individuals. In the modern economic world a man is able to assert himself much more effectively against others through his acknowledgment of common property rights underlying their whole economic activity; while he demands acknowledgment for his individual competitive effort by recognizing and utilizing the varied activities and economic functions of others in the whole business complex.

This evolution reaches a still richer content when the self-assertion appears in the consciousness of social contribution that obtains the esteem of the others whose activities it complements and renders possible. In the world of scientific research rivalries do not preclude the warm recognition of the service which the work of one scientist renders to the whole co-operative undertaking of the *monde savante*. It is evident that such a social organization is not obtainable at will, but is dependent upon the slow growth of very varied and intricate social mechanisms. While no clearly definable set of conditions can be presented as responsible for this growth, it will I think be admitted that a very necessary condition, perhaps the most important one, is that of overcoming the temporal and spatial separations of men so that they are brought into closer interrelation with each other. Means of intercommunications have been the great civilizing agents. The multiple social stimulation of an indefinite number of varied contacts of a vast number of individuals with each other is the fertile field out of which spring social organizations, for these make possible the larger social life

that can absorb the hostilities of different groups. When this condition has been supplied there seems to be an inherent tendency in social groups to advance from the hostile attitudes of individuals and groups toward each other through rivalries, competitions, and co-operations toward a functional self-assertion which recognizes and utilizes other selves and groups of selves in the activities in which social human nature expresses itself. And yet the attitude of hostility of a community toward those who have transgressed its laws or customs, i.e., its criminals, and toward the outer enemies has remained as a great solidifying power. The passionate appreciation of our religious, political, property, and family institutions has arisen in the attack upon those who individually or collectively have assailed or violated them, and hostility toward the actual or prospective enemies of our country has been the never-failing source of patriotism.

If then we undertake to deal with the causes of crime in a fundamental way, and as dispassionately as we are dealing with the causes of disease, and if we wish to substitute negotiation and international adjudication for war in settling disputes between nations, it is of some importance to consider what sort of emotional solidarity we can secure to replace that which the traditional procedures have supplied. It is in the juvenile court that we meet the undertaking to reach and understand the causes of social and individual breakdown, to mend if possible the defective situation and reinstate the individual at fault. This is not attended with any weakening of the sense of the values that are at stake, but a great part of the paraphernalia of hostile procedure is absent. The judge sits down with the child who has been committed to the court, with members of the family, parole officers, and others who may help to make the situation comprehensible and indicates what steps can be taken to bring matters to a normal condition. We find the beginnings of scientific technique in this study in the presence of the psychologist and medical officer who can report upon the mental and physical condition of the child, of the social workers who can report upon the situation of the families and neighborhood involved. Then there are other institutions beside the jails to which the children can be sent for pro-

longed observation and change of immediate environment. In centering interest upon reinstatement the sense of forward-looking moral responsibility is not only not weakened but is strengthened, for the court undertakes to determine what the child must do and be to take up normal social relations again. Where the responsibility rests upon others this can be brought out in much greater detail and with greater effect since it is not defined under abstract legal categories and the aim in determining responsibility is not to place punishment but to obtain future results. Out of this arises a much fuller presentation of the facts that are essential for dealing with the problem than can possibly appear in a criminal court procedure that aims to establish simply responsibility for a legally defined offense with the purpose of inflicting punishment. Of far greater importance is the appearance of the values of family relations, of schools, of training of all sorts, of opportunities to work, and of all the other factors that go to make up that which is worth while in the life of a child or an adult. Before the juvenile court it is possible to present all of these and all of them can enter the consideration of what action is to be taken. These are the things that are worth while. They are the ends that should determine conduct. It is impossible to discover their real import unless they can all be brought into relationship with each other.

It is impossible to deal with the problem of what the attitude and conduct of the community should be toward the individual who has broken its laws, or what his responsibility is in terms of future action, unless all the facts and all the values with reference to which the facts must be interpreted are there and can be impartially considered, just as it is impossible to deal scientifically with any problem without recognizing all the facts and all the values involved. The attitude of hostility which places the criminal under the ban, and thus takes him out of society, and prescribes a hostile procedure by which he is secured, tried, and punished can take into account only those features of his conduct which constitute infraction of the law, and can state the relation of the criminal and society only in the terms of trial for fixing guilt and of punishment. All else is irrelevant. The adult criminal court is not undertaking to readjust a broken-down social situation, but to determine by the application

of fixed rules whether the man is a member of society in good and regular standing or is an outcast. In accordance with these fixed rules what does not come under the legal definition not only does not naturally appear but it is actually excluded. Thus there exists a field of facts bearing upon the social problems that come into our courts and governmental administrative bureaus, facts which cannot be brought into direct use in solving these problems. It is with this material that the social scientist and the voluntary social worker and his organizations are occupied. In the juvenile court we have a striking instance of this material forcing its way into the institution of the court itself and compelling such a change in method that the material can be actually used. Recent changes of attitude toward the family permit facts bearing upon the care of children which earlier lay outside the purview of the court to enter into its consideration.

Other illustrations could be cited of this change in the structure and function of institutions by the pressure of data which the earlier form of the institution had excluded. One may cite the earlier theory of charity that it was a virtue of those in fortunate circumstances which is exercised toward the poor whom we have always with us, in its contrast with the conception of organized charity whose aim is not the exercise of an individual virtue but such a change in the condition of the individual case and of the community within which the cases arise that a poverty which requires charity may disappear. The author of a mediaeval treatise on charity considering the lepers as a field for good works contemplated the possibility of their disappearance with the ejaculation "which may God forbid!" The juvenile court is but one instance of an institution in which the consideration of facts which had been regarded as irrelevant or exceptional has carried with it a radical change in the institution. But it is of particular interest because the court is the objective form of the attitude of hostility on the part of the community toward the one who transgresses its laws and customs, and it is of further interest because it throws into relief the two types of emotional attitudes which answer to two types of social organization. Over against the emotional solidarity of the group opposing the enemy we find the interests

which spring up around the effort to meet and solve a social problem. These interests are at first in opposition to each other. The interest in the individual delinquent opposes the interest in property and the social order dependent upon it. The interest in the change of the conditions which foster the delinquent is opposed to that identified with our positions in society as now ordered, and the resentment at added responsibilities which had not been formerly recognized or accepted.

But the genuine effort to deal with the actual problem brings with it tentative reconstructions which awaken new interests and emotional values. Such are the interests in better housing conditions, in different and more adequate schooling, in playgrounds and small parks, in controlling child labor and in vocational guidance, in improved sanitation and hygiene, and in community and social centers. In the place of the emotional solidarity which makes us all one against the criminal there appears the cumulation of varied interests unconnected in the past which not only bring new meaning to the delinquent but which also bring the sense of growth, development, and achievement. This reconstructive attitude offers the cumulative interest which comes with interlocking diversified values. The discovery that tuberculosis, alcoholism, unemployment, school retardation, adolescent delinquency, among other social evils, reach their highest percentages in the same areas not only awakens the interest we have in combatting each of these evils, but creates a definite object, that of human misery, which focuses endeavor and builds up a concrete object of human welfare which is a complex of values. Such an organization of effort gives rise to an individual or self with a new content of character, a self that is effective since the impulses which lead to conduct are organized with reference to a clearly defined object.

It is of interest to compare this self with that which responds to the community call for defense of itself or its institutions. The dominant emotional coloring of the latter is found in the standing together of all the group against the common enemy. The consciousness which one has of others is stripped of the instinctive oppositions which in varying forms are aroused in us by the mere presence of others. These may be merely the slight rivalries

and differences of opinion and of social attitude and position, or just the reserves which we all preserve over against those about us. In the common cause these can disappear. Their disappearance means a removal of resistance and friction and adds exhilaration and enthusiasm to the expression of one of the most powerful of human impulses. The result is a certain enlargement of the self in which one seems to be at one with everyone else in the group. It is not a self-consciousness in the way of contrasting one's self with others. One loses himself in the whole group in some sense, and may attain the attitude in which he undergoes suffering and death for the common cause. In fact just as war removes the inhibitions from the attitude of hostility so it quickens and commends the attitude of self-assertion of a self which is fused with all the others in the community. The ban upon self-assertion which the consciousness of others in the group to which one belongs carries with it disappears when the assertion is directed against an object of common hostility or dislike. Even in times of peace we feel as a rule little if any disapproval of arrogance toward those of another nationality, and national self-conceit and the denigration of the achievements of other peoples may become virtues. The same tendency exists in varying degree among those who unite against the criminal or against the party foe. Attitudes of difference and opposition between members of the community or group are in abeyance and there is given the greater freedom for self-assertion against the enemy. Through these experiences come the powerful emotions which serve to evaluate for the time being what the whole community stands for in comparison with the interests of the individual who is opposed to the group. These experiences, however, serve only to set off against each other what the group stands for and the meager birthright of the individual who cuts himself off from the group.

What we all fight for, what we all protect, what we all affirm against the detractor, confers upon each in some measure the heritage of all, while to be outside the community is to be an Esau without heritage and with every man's hand against him. Self-assertion against the common enemy, suppressing as it does the oppositions of individuals within the group and thus identifying

them all in a common effort, is after all the self-assertion of the fight in which the opposing selves strive each to eliminate the other, and in so doing are setting up their own survival and the destruction of the others as the end. I know that many ideals have been the ends of war, at least in the minds of many of the fighters; that in so far the fighting was not to destroy the fighters but some pernicious institution, such as slavery, that many have fought bloody wars for liberty and freedom. No champions however, of such causes have ever failed to identify the causes in the struggle with themselves. The battle is for the survival of the right party and the death of the wrong. Over against the enemy we reach the ultimate form of self-assertion, whether it is the patriotic national self, or the party, or the schismatic self, or the institutional self, or simply the self of the hand to hand mêlée. It is the self whose existence calls for the destruction, or defeat, or subjection, or reduction of the enemy. It is a self that finds expression in vivid, concentrated activity and under appropriate conditions of the most violent type. The instinct of hostility which provides the structure for this self when fully aroused and put in competition with the other powerful human complexes of conduct, those of sex, of hunger, and of parenthood and of possession has proved itself as more dominant than they. It also carries with it the stimulus for readier and, for the time being, more complete socialization than any other instinctive organization. There is no ground upon which men get together so readily as that of a common enemy, while a common object of the instinct of sex, of possession, or of hunger leads to instant opposition, and even the common object of the parental instinct may be the spring of jealousy. The socializing agency of common hostility is marked, as I have above indicated, by its own defects. In so far as it is the dominant instinct it does not organize the other instincts for its object. It suppresses or holds the others in abeyance. While hostility itself may be a constituent part of the execution of any instinct, for they all involve oppositions, there is no other instinctive act of the human self which is a constituent part of the immediate instinctive process of fighting, while struggle with a possible opponent plays its part in the carrying out of every other instinctive

activity. As a result those who fight together against common enemies instinctively tend to ignore the other social activities within which oppositions between the individuals engaged normally arise.

It is this temporary relief from the social frictions which attend upon all other co-operative activities which is largely responsible for the emotional upheavals of patriotism, of mob consciousness, and the extremes of party warfare, as well as for the gusto of malicious gossiping and scandalmongering. Furthermore, in the exercise of this instinct success implies the triumph of the self over the enemy. The achievement of the process is the defeat of certain persons and the victory of others. The end takes the form of that sense of self-enlargement and assurance which comes with superiority of the self over others. The attention is directed toward the relative position of the self toward others. The values involved are those that only can be expressed in terms of interests and relations of the self in its differences from others. From the standpoint of one set of antagonists their victory is that of efficient civilization while the other regards their victory as that of liberal ideas. All the way from the Tamerlanes who create a desert and call it peace to the idealistic warriors who fight and die for ideas, victory means the survival of one set of personalities and the elimination of others, and the ideas and ideals that become issues in the contest must perforce be personified if they are to appear in the struggles that arise out of the hostile instinct. War, whether it is physical, economic, or political, contemplates the elimination of the physical, economic, or political opponent. It is possible to confine the operation of this instinct within certain specific limitations and fields. In the prize fights as in the olden tournaments the annihilation of the enemy is ceremonially halted at a fixed stage in the struggle. In a football game the defeated team leaves the field to the champion. Successful competition in its sharpest form eliminates its competitor. The victor at the polls drives the opponent from the field of political administration. If the struggle can be *à outrance* within any field and contemplates the removal of the enemy from that field, the instinct of hostility has this power of uniting and fusing the contesting groups, but since

victory is the aim of the fight and it is the victory of one party over the other, the issues of battle must be conceived in terms of the victor and the vanquished.

Other types of social organization growing out of the other instincts, such as possession, hunger, or parenthood, imply ends which are not as such identified with selves in their oppositions to other selves, though the objects toward which these instinctive activities are directed may be occasion for the exercise of the hostile instinct. The social organizations which arise about these objects are in good part due to the inhibitions placed upon the hostile impulse, inhibitions which are exercised by the other groups of impulses which the same situations call out. The possession by one individual in a family or clan group of a desirable object is an occasion for an attack on the part of other members of the group, but his characters as a member of the group are stimuli to family and clan responses which check the attack. It may be mere repression with smoldering antagonisms, or there may be such a social reorganization that the hostility can be given a function under social control, as in the party, political, and economic contests, in which certain party, political, and economic selves are driven from the field leaving others that carry out the social activity. Here the contest being restricted the most serious evils of the warfare are removed, while the contest has at least the value of the rough selection. The contest is regarded in some degree from the standpoint of the social function, not simply from that of the elimination of an enemy. As the field of constructive social activity widens the operation of the hostile impulse in its instinctive form decreases. This does not, however, mean that the reactions that go to make up the impulse or instinct have ceased to function. It does mean that the impulse ceases to be an undertaking to get rid of the offending object by injury and destruction, that is, an undertaking directed against another social being with capacities for suffering and death—physical, economical or political—like his own. It becomes in its organization with other impulses an undertaking to deal with a situation by removing obstacles. We still speak of him as fighting against his difficulties. The force of the original impulse is not lost but

its objective is no longer the elimination of a person, but such a reconstruction that the profounder social activities may find their continued and fuller expression. The energy that expressed itself in burning witches as the causes of plagues expends itself at present in medical research and sanitary regulations and may still be called a fight with disease.

In all these changes the interest shifts from the enemy to the reconstruction of social conditions. The self-assertion of the soldier and conqueror becomes that of the competitor in industry or business or politics, of the reformer, the administrator, of the physician or other social functionary. The test of success of this self lies in the change and construction of the social conditions which make the self possible, not in the conquest and elimination of other selves. His emotions are not those of mass consciousness dependent upon suppressed individualities, but arise out of the cumulative interests of varied undertakings converging upon a common problem of social reconstruction. This individual and his social organization are more difficult of accomplishment and subject to vastly greater friction than those which spring out of war. Their emotional content may not be so vivid, but they are the only remedy for war, and they meet the challenge which the continued existence of war in human society has thrown down to human intelligence.